IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 117 OF 2006

Shri Ranjit Satardekar,
Panaji, Goa. ... Applicant

versus

Smt. Rucmini Raghunath
Narvekar and others. ... Respondents

Mr. Rohit Bras De Sa, Advocate for the Applicant.

CORAM : N. A. BRITTO, J.

DATE : 16TH FEBRUARY,2006.

P.C.:-

Heard Mr. Rohit Bras De Sa, the learned Counsel on behalf of the applicant who is a complainant in Criminal Case No.63/2003/C. The complainant who is a practicing Advocate in the said case is prosecuting another practicing Advocate along with others under Section 500 I.P.C. It appears that the said complainant on account of certain events which took place in the course of the inquiry/trial in the said case approached the

learned Sessions Judge with an application for transfer of the said case but the said application came to be dismissed by Order dated 9-12-2005. In dismissing the application for transfer, the learned Sessions Judge observed that the events narrated or the reasons stated by the complainant were not sufficient to raise an apprehension that a fair and impartial trial would not be possible before the Presiding Officer of the said Court namely, 'C' Court at Panaji.

2. Several instances have been cited on behalf of the complainant by Mr. Rohit Bras De Sa, the learned Counsel on behalf of the applicant. Admittedly, by Order dated 30-4-2005, the learned J.M.F.C. was pleased not to issue process against A-1/Shaikh Vahidulla but process was issued against A-2 to A-11. The first grievance is that although urgent certified copy was applied of the said Order dated 30-4-2005 on 2-5-2005, the same was issued on 10-5-2005 and that too after intervention of the C.J.M. was sought by application dated 7-5-2005. The second grievance is that none of the accused appeared before the Court on 21-6-2005 although according to the complainant they were duly served. Further, it is seen that the complainant on

28-6-2005 filed an application to issue fresh summons but again on 29-6-2005 filed another application to withdraw the first application dated 28-6-2005 and for the purpose of issuing warrants to respondent nos.1 to 8 and summons to respondent/accused nos.9 and 10 who by then were renumbered. It appears that on behalf of accused nos.1, 3 to 8 an application for exemption was filed on 25-7-2005 and the same was granted and as far as A-1 was concerned with the consent of the complainant and as far as A-3 to A-8 are concerned inspite of objection having been taken by the complainant on account of non appearance of the said accused earlier on 21-6-2005. The complainant thereafter filed the application for transfer to the learned Sessions Judge on 9-8-2005 and after the said application was filed, on 14-9-2005, 26-10-2005 and 14-11-2005 some of the said accused were granted exemption after hearing the complainant. Mr. Bras De Sa, the learned Counsel on behalf of the complainant submits that the Presiding Officer Shri S. Parab has a bias against the complainant on account of the fact that the complainant had placed the happenings before the learned Administrative Judge of this Court for looking into them and taking action against him on the disciplinary side

which is known to him. Mr. Bras De Sa further submits that events such as this often take place in the Court presided by the said Judicial Officer and that such incidents have also been taking place in cases where the learned Advocate appears. If that is true, in my view, it would reflect absence of bias but the remedy would lie elsewhere, and I must hasten to add that none of the instances cited are sufficient to give any apprehension to the complainant who is a practicing Advocate that he will not get justice at the hands of the learned Presiding Officer. As far as incident of delay in furnishing the certified copy, the learned Presiding Officer could not be solely held responsible unless an inquiry is held into that aspect for certified copies, as far as my knowledge goes are issued by the Office of the Chief Judicial Magistrate. The orders discharging A-1 or for that matter granting exemption to the accused from time to time and that too after hearing the complainant are all judicial orders and only because the said judicial orders have gone against the complainant it cannot give rise to filing an application for transfer. If such transfer applications are to be encouraged then every litigant against whom an order is passed would be entitled to file for transfer application. Another grievance made was that

there were several adjournments before the complainant's case was taken up for inquiry before issuing process. This is also not an unusual feature that adjournments are granted before a case is taken up for one reason or the other. Complainant's perception that orders went against the complainant because the complainant had filed an application for disciplinary action to the Administrative Judge does not appear to be correct. Considering that the complainant is a practicing Advocate, none of the instances put forward on behalf of the complainant are sufficient to make out a case of bias, for transfer of the said criminal case filed by the complainant. In my view, the application was rightly rejected by the learned Sessions Judge and now deserves to be rejected by this Court as well.

Order accordingly.

N. A. BRITTO, J.

RD